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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN JOSE DIVISION

19 PersonalWeb Technologies, LLC and  
20 Level 3 Communications, LLC,

21 Plaintiffs,

22 v.

23 EMC Corporation and VMware, Inc.

24 Defendants.

Case No. 5:13-cv-01358-EJD

**DECLARATION OF CORTNEY  
C. HOECHERL IN SUPPORT OF  
DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
STAY PENDING *INTER PARTES*  
REVIEW**

Hon. Edward J. Davila

Hearing Date: January 10, 2014

Time: 9:00 am

Courtroom: 4 (5<sup>th</sup> Floor)

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DECLARATION OF CORTNEY C. HOECHERL IN SUPPORT OF  
DEFENDANTS' MOTION TO STAY PENDING *INTER PARTES* REVIEW  
Case No. 5:13-cv-01358-EJD

1 I, Cortney C. Hoecherl, declare as follows:

2 1. I am an attorney with Wilmer Cutler Pickering Hale and Dorr LLP, representing  
3 EMC Corporation and VMware, Inc. (collectively, "Defendants") in the above-captioned action.  
4 I submit this declaration in support of Defendants' Motion to Stay Pending *Inter Partes* Review  
5 ("IPR"). I have personal knowledge of the facts set forth in this declaration and, if called to  
6 testify as a witness, could and would do so competently.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of U.S. Patent No.  
8 5,978,791 ("the '791 patent");

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of the front cover,  
10 copyright page, and page 860 of the McGraw-Hill Dictionary of Scientific and Technical Terms  
11 (4th ed., 1989) (filed as Exhibit "EMCVMW 1013" to Defendants' '791 IPR Petition);

12 4. Attached hereto as **Exhibit 3** is a true and correct copy of B. Kaliski, "A Survey  
13 of Encryption Standards," IEEE Micro 74-81 (Dec. 1993) (filed as Exhibit "EMCVMW 1014" to  
14 Defendants' '791 IPR Petition);

15 5. Attached hereto as **Exhibit 4** is a true and correct copy of D. Knott, "Hashing  
16 functions," 18 The Computer Journal 265-278 (1975) (filed as Exhibit "EMCVMW 1011" to  
17 Defendants' '791 IPR Petition);

18 6. Attached hereto as **Exhibit 5** is a true and correct copy of R. Rivest, "The MD5  
19 Message-Digest Algorithm," Internet RFC 1321 (Apr. 1992) (filed as Exhibit "EMCVMW 1012"  
20 to Defendants' '791 IPR Petition);

21 7. Attached hereto as **Exhibit 6** is a true and correct copy of Defendants' filed  
22 Petition for *Inter Partes* Review of the '791 patent (Dkt. 8, IPR2013-00082).

23 8. Attached hereto as **Exhibit 7** is a true and correct copy of the Docket Report for  
24 Case No. 6:11-cv-00660-LED, as obtained from the Public Access to Court Electronic Records  
25 website ("PACER") at [https://pacer.login.uscourts.gov/cgi-bin/login.pl?court\\_id=00pcl](https://pacer.login.uscourts.gov/cgi-bin/login.pl?court_id=00pcl), and as  
26 accessed on August 7, 2013.

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DECLARATION OF CORTNEY C. HOECHERL IN SUPPORT OF  
DEFENDANTS' MOTION TO STAY PENDING *INTER PARTES* REVIEW  
Case No. 5:13-cv-1358-EJD

1           9.       Attached hereto as **Exhibit 8** is a true and correct copy of Defendants' filed  
2       Petition for *Inter Partes* Review of U.S. Patent No. 6,415,280 ("the '280 patent") (Dkt. 6,  
3       IPR2013-00083).

4           10.      Attached hereto as **Exhibit 9** is a true and correct copy of Defendant EMC  
5       Corp.'s Petition for *Inter Partes* Review of U.S. Patent No. 7,945,544 ("the '544 patent") (Dkt. 3,  
6       IPR2013-00084).

7           11.      Attached hereto as **Exhibit 10** is a true and correct copy of Defendant EMC  
8       Corp.'s Petition for *Inter Partes* Review of U.S. Patent No. 7,945,539 ("the '539 patent") (Dkt. 5,  
9       IPR2013-00085).

10          12.      Attached hereto as **Exhibit 11** is a true and correct copy of Defendant EMC  
11       Corp.'s Petition for *Inter Partes* Review of U.S. Patent No. 7,949,662 ("the '662 patent") (Dkt. 3,  
12       IPR2013-00086).

13          13.      Attached hereto as **Exhibit 12** is a true and correct copy of Defendant EMC  
14       Corp.'s Petition for *Inter Partes* Review of U.S. Patent No. 8,001,096 ("the '096 patent") (Dkt. 5,  
15       IPR2013-00087).

16          14.      Attached hereto as **Exhibit 13** is a true and correct copy of the Patent Trial and  
17       Appeal Board's ("PTAB's") Decision to institute *Inter Partes* Review ("IPR") of the '791 patent  
18       (Dkt. 21, IPR2013-00082).

19          15.      Attached hereto as **Exhibit 14** is a true and correct copy of the PTAB's Decision  
20       to institute IPR of the '280 patent (Dkt. 19, IPR2013-00083).

21          16.      Attached hereto as **Exhibit 15** is a true and correct copy of the PTAB's Decision  
22       to institute IPR of the '544 patent (Dkt. 14, IPR2013-00084).

23          17.      Attached hereto as **Exhibit 16** is a true and correct copy of the PTAB's Decision  
24       to institute IPR of the '539 patent (Dkt. 18, IPR2013-00085).

25          18.      Attached hereto as **Exhibit 17** is a true and correct copy of the PTAB's Decision  
26       to institute IPR of the '662 patent (Dkt. 14, IPR2013-00086).

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28       **DECLARATION OF CORTNEY C. HOECHERL IN SUPPORT OF  
DEFENDANTS' MOTION TO STAY PENDING *INTER PARTES* REVIEW  
Case No. 5:13-cv-01358-EJD**

1           19.     Attached hereto as **Exhibit 18** is a true and correct copy of the PTAB's Decision  
2 to institute IPR of the '096 patent (Dkt. 16, IPR2013-00087).

3           20.     Attached hereto as **Exhibit 19** is a true and correct copy of the PTAB's  
4 Scheduling Order regarding IPR of the '791 patent (Dkt. 22, IPR2013-00082).

5           21.     Attached hereto as **Exhibit 20** is a true and correct copy of the PTAB's  
6 Scheduling Order regarding IPR of the '280 patent (Dkt. 20, IPR2013-00083).

7           22.     Attached hereto as **Exhibit 21** is a true and correct copy of the PTAB's  
8 Scheduling Order regarding IPR of the '544 patent (Dkt. 15, IPR2013-00084).

9           23.     Attached hereto as **Exhibit 22** is a true and correct copy of the PTAB's  
10 Scheduling Order regarding IPR of the '539 patent (Dkt. 19, IPR2013-00085).

11          24.     Attached hereto as **Exhibit 23** is a true and correct copy of the PTAB's  
12 Scheduling Order regarding IPR of the '662 patent (Dkt. 15, IPR2013-00086).

13          25.     Attached hereto as **Exhibit 24** is a true and correct copy of the PTAB's  
14 Scheduling Order regarding IPR of the '096 patent (Dkt. 17, IPR2013-00087).

15          26.     Attached hereto as **Exhibit 25** is a true and correct copy of the unpublished  
16 opinion, *Autoalert, Inc. v. Dominion Dealer Solutions, LLC*, Case No. 12-cv-01661, ECF No. 41  
17 (C.D. Cal. May 22, 2013), as obtained from PACER.

18          27.     Attached hereto as **Exhibit 26** is a true and correct copy of the unpublished  
19 opinion, *Pi-Net Int'l, Inc. v. The Hertz Corp.*, Case No. 12-cv-10012, ECF No. 31 (C.D. Cal.  
20 June 5, 2013), as obtained from PACER.

21          28.     Attached hereto as **Exhibit 27** is a true and correct copy of the unpublished  
22 opinion, *Robert Bosch Healthcare Sys., Inc. v. Cardiocom, LLC*, Case No. 12-cv-03864, ECF No.  
23 43 (N.D. Cal. Dec. 3, 2012), as obtained from PACER.

24          29.     Attached hereto as **Exhibit 28** is a true and correct copy of PersonalWeb's  
25 Supplemental Infringement Contentions, as served on Defendants in *PersonalWeb Techs., LLC v.*  
26 *EMC Corp. et al.*, Case No. 6:11-cv-00660 (LED), on or around October 31, 2012.

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DECLARATION OF CORTNEY C. HOECHERL IN SUPPORT OF  
DEFENDANTS' MOTION TO STAY PENDING *INTER PARTES* REVIEW  
Case No. 5:13-cv-01358-EJD

1           30. Attached hereto as **Exhibit 29** is a true and correct copy of the unpublished  
2 opinion, *EuroCapital v. Colburn*, 2008 WL 401352, C.A. No. 3035-VCN (Del. Ch. 2008), as  
3 obtained from Westlaw.

4           31. Attached hereto as **Exhibit 30** is a true and correct copy of the unpublished  
5 opinion, *Fresenius USA, Inc. v. Baxter International Inc.*, Case No. 2012-1334 (Fed. Cir. July 2,  
6 2013), as obtained at [http://www.cafc.uscourts.gov/images/stories/opinions-orders/12-](http://www.cafc.uscourts.gov/images/stories/opinions-orders/12-1334.Opinion.6-27-2013.1.PDF)  
7 [1334.Opinion.6-27-2013.1.PDF](http://www.cafc.uscourts.gov/images/stories/opinions-orders/12-1334.Opinion.6-27-2013.1.PDF), and as accessed on August 12, 2013.

8           32. As of August 13, 2013, the parties *PersonalWeb Techs., LLC v. EMC Corp. et al.*,  
9 Case No. 6:11-cv-00660 (LED) have not yet negotiated email search terms and custodians as  
10 anticipated by the Court's E-Discovery Order (Dkt. 80), no fact depositions have been taken on  
11 issues beyond venue transfer, no expert reports have been exchanged, no expert depositions have  
12 occurred, and no summary judgment motions have been filed.

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14           I declare under penalty of perjury under the laws of the United States that the foregoing is  
15 true and correct. Executed on August 13, 2013, in Palo Alto, California.

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19           Courtney C. Hoecherl